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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MEENA ARTHUR DATTA, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

ASSET RECOVERY SOLUTIONS, LLC, an  
Illinois limited liability company,

Defendant.

Case No. 5:15-CV-00188-LHK-PSG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR CLASS  
CERTIFICATION**

Hearing Date: March 10, 2016  
Hearing Time: 2:00 p.m.  
Hearing Judge: Lucy H. Koh  
Hearing Courtroom: 8, 4<sup>th</sup> Floor  
Hearing Location: 280 South First Street  
San Jose, California

COMES NOW the Plaintiff, MEENA ARTHUR DATTA, by and through her counsel, Fred W. Schwinn and Raeon R. Roulston of Consumer Law Center, Inc., and O. Randolph Bragg of Horwitz, Horwitz & Associates, Ltd., and submits her Memorandum of Points and Authorities in Support of Plaintiff's Motion for Class Certification.

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## I. NATURE OF THE CASE

This class action case was brought by Plaintiff to address Defendant, ASSET RECOVERY SOLUTIONS, LLC's, ("Defendant"), violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices. Generally, Plaintiff is alleged to have owed a defaulted consumer debt which was placed, assigned, or otherwise transferred to Defendant for collection from Plaintiff. The violations stem from Defendant's communications attempting to collect a consumer debt from Plaintiff and similarly situated individuals. Generally, Defendant is alleged to have sent a collection letter (Exhibit "1") in an envelope (Exhibit "2") that was designed to disclose Defendant's identifying number for Plaintiff's account (i.e. "ARSL/1/6474509"), and a bar-code containing the same information, to anyone who handled or processed the envelope while in transit to the Plaintiff, in violation of 15 U.S.C. § 1692f(8) and Cal. Civil Code § 1788.17.<sup>1</sup>

Plaintiff moves this Court to certify this matter as a class action. Plaintiff requests the Court define the class as follows: The class is defined as (i) all persons with addresses in California, (ii) to whom Defendant sent, or caused to be sent, a collection letter in the form of Exhibit "1" in an envelope in the form of Exhibit "2," (iii) in an attempt to collect an alleged debt originally owed to HSBC Bank Nevada, N.A., (iv) which was incurred primarily for personal, family, or household purposes, (v) which were not returned as undeliverable by the U.S. Post Office, (vi) during the period one year prior to the date of filing this action through the date of class certification.

This Memorandum is submitted in support of Plaintiff's Motion for Class Certification.

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<sup>1</sup> See, *Styer v. Prof'l Med. Mgmt.*, --- F.Supp. ---, 2015 U.S. Dist. LEXIS 92349 (M.D. Pa. July 15, 2015) (debt collector's use of glassine envelope which displayed QR code violated 1692f(8) as a matter of law); and, *Kostik v. ARS Nat'l Servs.*, 2015 U.S. Dist. LEXIS 95230 (M.D. Pa. July 22, 2015) (consumer stated an FDCPA claim where debt collector's envelope displayed bar code through glassine window).

## II. PLAINTIFF'S CLAIMS

In her First Amended Class Action Complaint,<sup>2</sup> Plaintiff alleges that it is the standard practice and policy of Defendant to send, or cause to be sent, collection letters in glassine window envelopes in the form of Exhibit “2” which seek to collect defaulted debts incurred for personal, family, or household purposes. Plaintiff further alleges that it is the standard practice and policy of Defendant to send collection letters and envelopes in the form of Exhibit “2” which contain a QR (quick recovery) or bar code and the business name “Asset Recovery Solutions, LLC” in the return address, thereby indicating to anyone who handles or processes the envelope while in transit to the consumer, that it was sent by a company that is in the business of collecting debts, in violation of 15 U.S.C. §§ 1692f(8) and Cal. Civil Code § 1788.17.

## III. STANDARD FOR CLASS CERTIFICATION

Under Fed. R. Civ. P., Rule 23, “[a] class action may be maintained if two conditions are met: The suit must satisfy the criteria set forth in subdivision (a) (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of three categories described in subdivision (b).”<sup>3</sup> “When evaluating a motion for class certification, the court accepts the allegations made in support of certification as true, and does not examine the merits of the case.”<sup>4</sup>

Congress expressly recognized the propriety of a class action under the FDCPA by providing special damage provisions and criteria in 15 U.S.C. §§ 1692k(a) and (b) for FDCPA class action cases.<sup>5</sup>

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<sup>2</sup> Doc. 21.

<sup>3</sup> *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398, 130 S. Ct. 1431, 176 L. Ed. 2d 311 (2010) (internal quotation marks omitted); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231, 2245, 138 L. Ed. 2d 689 (1997); *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

<sup>4</sup> *Blackie v. Barrack*, 524 F.2d 891, 901, fn. 16 (9th Cir. 1975). *Also see, Gonzales v. Arrow Fin. Servs. LLC*, 233 F.R.D. 577, 579-80 (S.D. Cal. 2006).

<sup>5</sup> *See Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541, 544 (N.D. Cal. 2005); *Clark v. Bonded Adjustment Co.*, 204 F.R.D. 662 (E.D. Wash. 2002); *Irwin v. Mascott*, 186 F.R.D. 567 (N.D. Cal. 1999); *Ballard v. Equifax Check Services, Inc.*, 186 F.R.D. 589 (E.D. Cal. 1999); *Duran v. Bureau of Yuma, Inc.*, 93 F.R.D. 607 (D. Ariz. 1982).

#### IV. THE PROPOSED CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION

##### A. THE CLASS IS ASCERTAINABLE

“Defining the class is of critical importance because it identifies the persons (1) entitled to relief, (2) bound by a final judgment, and (3) entitled under Rule 23(c)(2) to the “best notice practicable” in a Rule 23(b)(3) action. The definition must be precise, objective, and presently ascertainable.”<sup>6</sup>

“As a prerequisite to class certification, some courts require that plaintiffs propose a class that is ‘definite’ or ‘ascertainable.’”<sup>7</sup> The class definition must set forth an “ascertainable” class, i. e. - the members can be ascertained by reference to objective criteria. A class definition is “definite enough” to satisfy Fed. R. Civ. P. 23(a)(1) if it “is administratively feasible for the court to ascertain whether an individual is a member.”<sup>8</sup> “An identifiable class exists if its members can be ascertained by reference to objective criteria.”<sup>9</sup> Nothing in Rule 23 implies a heightened ascertainability requirement under Rule 23(b)(3).<sup>10</sup>

Here Plaintiff’s proposed class is readily identifiable by a review of Defendant’s computerized records. Thus, Plaintiff’s proposed definition of the class is ascertainable.

##### B. RULE 23(a)(1) – NUMEROSITY

Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that the class be “so numerous that joinder of all members is impracticable.”<sup>11</sup> “This requirement is met if the class is so large that joinder of all members is impracticable.”<sup>12</sup> While a plaintiff need not state the exact number of class

<sup>6</sup> Manual for Complex Litigation-Fourth § 21.222 (4th ed. 2004).

<sup>7</sup> Newberg on Class Actions § 3:2 (5th ed. 2011).

<sup>8</sup> *In re Tableware Antitrust Litig.*, 241 F.R.D. 644, 650 (N.D. Cal. 2007) (citation omitted).

<sup>9</sup> *Stinson v. City of New York*, 282 F.R.D. 360, 367 (S.D.N.Y. 2012) (citations omitted); *Wallace v. NCL Ltd.*, 271 F.R.D. 688 (S.D. Fla. 2010).

<sup>10</sup> *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. Ill. 2015).

<sup>11</sup> *Gay v. Waiters and Dairy Lunchmen’s Union*, 549 F.2d. 1330 (9th Cir. 1977).

<sup>12</sup> *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012).

members and there is no threshold number above which impracticability is presumed,<sup>13</sup> as a general rule, “classes of 40 or more are numerous enough.”<sup>14</sup> “When the class is large, numbers alone are dispositive . . . .”<sup>15</sup>

Here, the class is so numerous that joinder of all members is impractical. The class definition includes those persons in California that Defendant has sent, or caused to be sent, collection letters in the form of Exhibit “1” in an envelope in the form of Exhibit “2,” attached to the First Amended Class Action Complaint.<sup>16</sup> Defendant has admitted that it sent collection letters in the form of Exhibit “1” in envelopes in the form of Exhibit “2” to at least 10,000 California addresses from January 13, 2014, through the present.<sup>17</sup> Because the 10,000 recipients of these letters are members of the class, as defined above, numerosity has been satisfied. “Class actions are generally appropriate where standardized documents are at issue.”<sup>18</sup>

### C. RULE 23(a)(2) – COMMONALITY

Rule 23(a)(2) requires that there be a common question of law or fact. A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2).<sup>19</sup> “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.”<sup>20</sup> Where the defendant has engaged in standardized conduct towards members of the proposed class by mailing to them alleged illegal form letters or documents in illegal glassine envelopes

<sup>13</sup> *O’Donovan v. Cashcall, Inc.*, 278 F.R.D. 479, 488 (N.D. Cal. 2011).

<sup>14</sup> *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988) (internal quotations and citations omitted).

<sup>15</sup> *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986).

<sup>16</sup> Doc. 21.

<sup>17</sup> See, Declaration of Fred W. Schwinn in Support of Plaintiff’s Motion for Class Certification at ¶ 4, Exhibit “B,” Response to Request for Admission No. 23.

<sup>18</sup> *Abels*, 227 F.R.D. at 543.

<sup>19</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

<sup>20</sup> *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).

1 the commonality requirement is met. “Common nuclei of fact are typically manifest where, like in the  
 2 case *sub judice*, the defendants have engaged in standardized conduct towards members of the proposed  
 3 class by mailing to them allegedly illegal form letters or documents.”<sup>21</sup>

4  
 5 Moreover, not all factual or legal questions raised in the litigation need be common so long as at  
 6 least one issue is common to all class members.<sup>22</sup> “A sufficient nexus is established if the claims or  
 7 defenses of the class and the class representatives arise from the same event or pattern or practice and  
 8 are based on the same legal theory.”<sup>23</sup>

9  
 10 There are common questions of law and fact common to the class, which questions predominate  
 11 over any questions affecting only individual class members. All class members were sent letters in the  
 12 form of Exhibit “1” in envelopes in the form of Exhibit “2” (attached to the First Amended Class  
 13 Action Complaint). As explained in Section II herein, the principal issues of law are whether  
 14 Defendant’s collection letters violated the FDCPA and the RFDCPA by disclosing the identifying  
 15 number of Plaintiff’s account and the business name “Asset Recovery Solutions, LLC” on the envelope  
 16 to anyone who handled or processed the envelope while in transit to the Plaintiff, in violation of 15  
 17 U.S.C. §§ 1692f(8) and Cal. Civil Code § 1788.17.

18  
 19 “To establish commonality, it is sufficient that plaintiff allege that all class members received  
 20 the same collection letter.”<sup>24</sup> “The plaintiff’s and the class’ claims arise from the defendant having sent  
 21 the same debt collection letters resulting in the same alleged violations of the act . . . Therefore, the  
 22 proposed class members share common questions of law and fact . . . ”<sup>25</sup> FDCPA claims based on  
 23 standard language in documents or standard practices are well suited for class certification.<sup>26</sup>

24  
 25 <sup>21</sup> *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998) (citations omitted); *Abels*, 227 F.R.D. at 544.

26 <sup>22</sup> *Hanlon*, 150 F.3d at 1019; *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 56-57 (3d Cir. 1994).

27 <sup>23</sup> *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).

28 <sup>24</sup> *Swanson v. Mid Am, Inc.*, 186 F.R.D. 665, 668 (M.D. Fla. 1999).

<sup>25</sup> *Silva v. National Telewire Corp.*, No. 99-219, 2000 U.S. Dist. LEXIS 13986 at \*7-8 (D. N.H., Sept. 22, 2000).

<sup>26</sup> *Keele*, 149 F.3d at 594.

1 It is also important to note that there is no question in this case concerning the validity of the  
2 underlying debt.<sup>27</sup> Thus, Plaintiff has satisfied the commonality requirement of Rule 23(a)(2).

### 3 **D. RULE 23(a)(3) – TYPICALITY**

4 Rule 23(a)(3) requires the claims of the named plaintiff to be typical of the claims of the class.<sup>28</sup>

5 A plaintiff's claim is typical if it arises from the same event or practice or  
6 course of conduct that gives rise to the claims of other class members and  
7 his or her claims are based on the same legal theory. The typicality  
8 requirement may be satisfied even if there are factual distinctions  
9 between the claims of the named plaintiffs and those of other class  
10 members. Thus, similarity of legal theory may control even in the face of  
11 differences of fact.<sup>29</sup>

12 In *Abels v. JBC Legal Group, P.C.*,<sup>30</sup> the Northern District of California stated, "Each of the  
13 class members was sent the same collection letter as [plaintiff] and each was allegedly subjected to the  
14 same violations of the FDCPA. Therefore, this Court concludes that claims of the class representative  
15 are [sic] typical of the claims of the class."<sup>31</sup>

16 In the instant case, each of the class members were sent the same letter in the same envelope,  
17 which Plaintiff claims violates the FDCPA and the RFDCPA. Here, typicality is inherent in the class  
18 definition, *i.e.*, each of the class members were subject to the same demands and violations of the  
19 FDCPA and as Plaintiff.

20 Thus, the typicality requirement of Rule 23(a)(3) is satisfied.

### 21 **E. RULE 23(a)(4) – ADEQUACY OF REPRESENTATION**

22 The rule also requires that the named plaintiffs provide fair and adequate protection for the  
23

24 <sup>27</sup> *Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982) (FDCPA action was not contingent  
25 on the validity of the underlying debt); *McCarthy v. First City Bank*, 970 F.2d 45 (5th Cir. 1992) (same).

26 <sup>28</sup> *Hanlon*, 150 F.3d 1011.

27 <sup>29</sup> *Armstrong*, 275 F.3d at 869; *See also, Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985);  
28 *Rossini v. Ogilvy & Mather, Inc.*, 798 F.2d 590, 598-600 (2d Cir. 1986); *Kornburg v. Carnival Cruise  
Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.  
1992); *Keele*, 149 F.3d at 595.

<sup>30</sup> 227 F.R.D. 541.

<sup>31</sup> *Id.* at 545.

1 interests of the class.<sup>32</sup> That protection involves two factors: (1) whether plaintiff's counsel are  
 2 qualified, experienced, and generally able to conduct the proposed litigation, and (2) whether the  
 3 plaintiffs have interests antagonistic to those of the class.<sup>33</sup>

4 Plaintiff understands her responsibilities as class representative.<sup>34</sup> She is represented by  
 5 experienced counsel whose qualifications are set forth in Declaration of Fred W. Schwinn, Declaration  
 6 of Raeon R. Roulston, and Declaration of O. Randolph Bragg. This Court has determined, most  
 7 recently in *Gold v. Midland Credit Mgmt.*,<sup>35</sup> and again in *Jacobson v. Persolve, LLC*,<sup>36</sup> that all three of  
 8 the aforementioned counsel for Plaintiff are qualified and competent to serve as class counsel.  
 9 Additionally, the Northern District of California has stated, "it seems clear that the lead counsel for this  
 10 lawsuit, O. Randolph Bragg, has been qualified and found competent to represent similar class  
 11 actions."<sup>37</sup> "Plaintiff's counsel demonstrate they have sufficient experience to adequately represent the  
 12 class members."<sup>38</sup>

15 The second relevant consideration under Rule 23(a)(4) is whether the interests of the named  
 16 plaintiff are coincident with the general interests of the class. Plaintiff and the class members seek  
 17 statutory damages as well as equitable relief as the result of Defendant's unlawful collection practices.  
 18 Given the identical nature of the claims of Plaintiff and the class members, there is no potential for  
 19 conflicting interests in this action. There is no antagonism between the interests of the named plaintiff  
 20 and those of the class.

22 Thus, Plaintiff has satisfied the adequate representation requirement of Rule 23(a)(4).  
 23

24 <sup>32</sup> *Epstein v. MCA, Inc.*, 179 F.3d. 641 (9th Cir. 1999).

25 <sup>33</sup> *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F. 2d 507, 512 (9th Cir 1978). *See also, Evon*, 688 F.3d  
 26 at 1031.

26 <sup>34</sup> *See Declaration of Meena Arthur Datta in Support of Plaintiff's Motion for Class Certification.*

27 <sup>35</sup> 2014 U.S. Dist. LEXIS 142758 (N.D. Cal. Oct. 7, 2014) (Freeman, J.).

27 <sup>36</sup> 2015 U.S. Dist. LEXIS 73313 (N.D. Cal. June 4, 2015) (Koh, J.).

28 <sup>37</sup> *Abels*, 227 F.R.D. at 545.

<sup>38</sup> *Gonzales*, 233 F.R.D. at 583.

1           **F. COMMON QUESTIONS OF LAW OR FACT PREDOMINATE**

2           Rule 23(b)(3) requires that the questions of law or fact common to all members of the class  
3 predominate over questions pertaining to individual members.<sup>39</sup> This criterion is normally satisfied  
4 when there is an essential, common factual link between all class members and the defendant for which  
5 the law provides a remedy.<sup>40</sup> In this case, the “common nucleus of operative fact,” is that all class  
6 members, by definition, were subjected to Defendant’s policy of sending collection letters in the form  
7 of Exhibit “1” in envelopes in the form of Exhibit “2,” attached to the First Amended Class Action  
8 Complaint,<sup>41</sup> which are alleged to violate the FDCPA and RFDCPA. The legal issues arising from  
9 Defendant’s letters are the same for each class member.  
10

11           Cases dealing with the legality of standardized documents and practices are generally  
12 appropriate for resolution by class action because the document is the focal point of the analysis.<sup>42</sup>  
13 Because of the standardized nature of Defendant’s conduct, common questions predominate.  
14 “Predominance is a test readily met in certain cases alleging consumer . . . fraud. . . .”<sup>43</sup> In *Abels*, the  
15 court stated in support of certifying the class,  
16

17           The common fact in this case is that the putative class members were  
18 subjected to Defendants’ policy of sending collection letters, which are  
19 alleged to violate the FDCPA. Thus, the legal issues arising from  
20 Defendants’ letters are the same for each class member. Here, the issues  
21 common to the class—namely, whether the Defendants’ systematic policy  
22 of sending collection letters, and whether those letters violate FDCPA—are  
23 predominant. Plaintiff’s Complaint centers around these issues.<sup>44</sup>

23 <sup>39</sup> *Hanlon*, 150 F.3d at 1019.

24 <sup>40</sup> *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996); *See also, Silva*, 2000 U.S. Dist.  
25 LEXIS 13986 at \*11 (“The standardized nature of the defendant’s conduct satisfied the requirement for  
26 common questions of law or fact.”).

27 <sup>41</sup> Doc. 21.

28 <sup>42</sup> *See Gonzales*, 233 F.R.D. at 582; *Abels*, 227 F.R.D. at 543; *Clark*, 204 F.R.D. 662; *Littledove v. JBC*  
29 *& Assocs.*, No. S-00-0586, 2001 U.S. Dist. LEXIS 139 (E.D. Cal., Jan. 11, 2001); *Ballard*, 186 F.R.D.  
30 at 589; *Irwin*, 186 F.R.D. at 567.

<sup>43</sup> *Amchem*, 521 U.S. at 624.

<sup>44</sup> *Abels*, 227 F.R.D. at 547.

1 The instant case is similar to *Abels*. The only individual issue is the identification of the  
 2 consumers who were subjected to Defendant's practice and policy of sending letters in the form of  
 3 Exhibit "1" in envelopes in the form of Exhibit "2." This is a matter capable of ministerial  
 4 determination from the Defendant's records. This is not the kind of problem that is a barrier to class  
 5 certification.  
 6

7 In this case, it is clear that both the class' factual issues and the issues of law predominate over  
 8 any individual questions.

9 **G. A CLASS ACTION IS SUPERIOR TO OTHER AVAILABLE METHODS TO**  
 10 **RESOLVE THIS CONTROVERSY**

11 Efficiency is the primary focus in determining whether the class action is the superior method  
 12 for resolving the controversy presented.<sup>45</sup> The Court is required to determine the best available method  
 13 for resolving the controversy and must "consider the interests of the individual members in controlling  
 14 their own litigation, the desirability of concentrating the litigation in the particular forum, and the  
 15 manageability of the class action."<sup>46</sup> It is proper for a court, in deciding the "best" available method, to  
 16 consider the "... inability of the poor or uninformed to enforce their rights, and the improbability that  
 17 large numbers of class members would possess the initiative to litigate individually."<sup>47</sup>  
 18

19 In this case, there is no better method available for the adjudication of the claims which might  
 20 be brought by each individual debtor subjected to Defendants' practice.<sup>48</sup> Class actions are a more  
 21 efficient and consistent means of trying the legality of a collection letter.<sup>49</sup>  
 22

23 The efficacy of consumer class actions is recognized particularly where the individual's claim is  
 24 small.  
 25

26 <sup>45</sup> *Gete v. I.N.S.*, 121 F.3d 1285 (9th Cir. 1997).

27 <sup>46</sup> *Ballard*, 186 F.R.D. at 600.

28 <sup>47</sup> *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1165 (7th Cir. 1974).

<sup>48</sup> *Clark*, 204 F.R.D. at 666.

<sup>49</sup> *Ballard*, 186 F.R.D. at 589; *Brink v. First Credit Resources*, 185 F.R.D. 567 (D. Ariz. 1999).

In this instance, the alternative methods of resolution are individual claims for a small amount of consequential damages or latch replacement . . . Thus, many claims could not be successfully asserted individually. Even if efficacious, these claims would not only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs. In most cases, litigation costs would dwarf potential recovery. In this sense, the proposed class action is paradigmatic. A fair examination of alternatives can only result in the apodictic conclusion that a class action is the clearly preferred procedure in this case.<sup>50</sup>

Moreover, “the size of any individual damages claims under the FDCPA are usually so small that there is little incentive to sue individually.”<sup>51</sup> “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.”<sup>52</sup> “Defendant would no doubt benefit from [a denial of certification], as the vast majority, if not all, of those potential plaintiffs would fail to pursue [...] claims. But [Defendant’s] desire to limit [its] exposure in damages cannot be a criteria for assessing the appropriateness of a class action. Rather, the Court must keep in mind the ‘private attorney general’ enforcement mechanism chosen by Congress in enacting the FDCPA.”<sup>53</sup> Class certification of an FDCPA damage action will provide an efficient and appropriate resolution of the controversy.<sup>54</sup>

#### **H. CLASS CERTIFICATION PURSUANT TO 23(b)(3) IS APPROPRIATE**

An action may be maintained as a class action under Rule 23(b)(3) if:

the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

As explained above, Plaintiff has satisfied all of the requirements pertinent to a class action.

<sup>50</sup> *Hanlon*, 150 F.3d at 1023.

<sup>51</sup> *Ballard*, 186 F.R.D. at 600 (citations omitted).

<sup>52</sup> *Amchem*, 521 U.S. at 617, citing *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. Ill. 1997).

<sup>53</sup> *Macarz v. Transworld Sys.*, 193 F.R.D. 46, 55 (D. Conn. 2000).

<sup>54</sup> *See Irwin*, 186 F.R.D. 567; *Ballard*, 186 F.R.D. 589.

Moreover, as discussed in this Memorandum, Plaintiff has shown that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Therefore, Plaintiff requests the Court find that this class action is suitable for certification pursuant to Rule 23(b)(3).

#### **V. CONCLUSION**

The proposed class meets the requirements of Rules 23(a) as well as Rule 23(b)(3). Plaintiff, MEENA ARTHUR DATTA, respectfully requests that the Court certify this action as a class action.

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Dated: October 15, 2015

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